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Government Affairs Director

MAY 11 1999

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May 11, 1999

Ms. Magalie Roman Salas, Secretary  
Federal Communications Commission  
445 Twelfth Street, S. W. - Room TWB-204  
Washington, D. C. 20554

Re: Ex parte, CC Docket No. 98-56, Performance Measurements and Reporting  
Requirements for Operations Support Systems, Interconnection, and Operator Services  
and Directory Assistance

Dear Ms. Roman Salas:

On Monday, May 10, 1999, C. Michael Pfau, Richard Rubin, Cheryl Bursh and the undersigned met with Michael Pryor, Jake Jennings, Claudia Pabo and Andrea Kearney of the Common Carrier Bureau's Policy and Program Planning Division. The purpose of the meeting was to discuss AT&T's May 5, 1999 written ex parte filing in the above-captioned proceeding, Analysis of BellSouth's Proposal for Self-Effectuating Enforcement Measures. AT&T's comments were consistent with the views expressed in its May 5, 1999 submission.

Two copies of this Notice are being submitted to the Secretary of the FCC in accordance with Section 1.1206 of the Commission's rules.

Sincerely,

ATTACHMENT

cc: J. Jennings  
M. Pryor  
C. Pabo  
A. Kearney

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AT&T

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Re: Ex parte, CC Docket No. 98-56, Performance Measurements and Reporting  
Requirements for Operations Support systems, Interconnection, and Operator Services  
and Directory Assistance

Dear Ms. Roman Salas:

The attached analysis of BellSouth's April 8, 1999 proposal for self-effectuating enforcement measures is being submitted for inclusion in the record of the above-referenced proceeding.

Two copies of this Notice are being submitted to the Secretary of the FCC in accordance with Section 1.1206 of the Commission's rules.

Sincerely,

ATTACHMENT

cc: M. Pryor  
J. Jennings  
D. Shiman  
C. Pabo  
F. Setzer  
A. Rausch  
A. Belinfante



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Analysis of BellSouth's 4/8/99  
Proposal for Self-Effectuating Enforcement Measures

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The Commission in its decision in Louisiana II, made clear that the public interest demands a self-executing enforcement mechanism to ensure Regional Bell Operating Companies' ("RBOC") compliance with established performance standards.<sup>1</sup> This Commission also emphasized in the Louisiana II decision that enforcement mechanisms that require new entrants to engage in lengthy and contentious legal and regulatory proceedings concerning performance disputes will not be considered to be in the public interest as the Commission considers RBOCs' future applications for in-region, interLATA authority.<sup>2</sup>

The Commission's Common Carrier Bureau Staff ("Bureau Staff") provided in a recent letter further direction to BellSouth concerning the Commission's evaluation of any proposed performance measures methodology.<sup>3</sup> Among the several items that the Bureau Staff suggested that BellSouth include in its system for payments for poor performance are: a statistical methodology for comparing actual performance results to retail analogues or benchmarks, a threshold for determining whether differences in performance are competitively significant, and meaningful penalty amounts to prevent "backsliding."<sup>4</sup>

BellSouth's 4/8/99 proposal does not comply with Louisiana II or with the direction it recently received from the Bureau Staff.

Additionally, BellSouth's proposal fails to meet the seven guiding principles that should be the basis of a RBOC's performance measures methodology. Those principles are:

1. Consequences with a meaningful impact.
2. Consequences that escalate with repeated or exceptionally poor performance.
3. Additional consequences for poor performance across the industry.
4. Minimized "entanglement" costs. The plan should be simple, but effective.
5. Minimal opportunities to "game" the system.
6. Few automatic exclusions.
7. Consequences should take effect without undue delay in regulatory or legal proceedings.

Attached is a chart summary comparing BellSouth's proposal to these principles.

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<sup>1</sup> In the Matter of Application of BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA Services in Louisiana, CC Docket No. 98-121, Memorandum Opinion and Order, FCC 98-271, October 13, 1998, para. 364, ("Louisiana II").

<sup>2</sup> Id.

<sup>3</sup> See February 10, 1999 letter from the FCC Common Carrier Bureau Staff to Mr. Sid Boren of BellSouth.

<sup>4</sup> Id.

## Summary of BellSouth's Proposal

BellSouth proposes a scant nine measures upon which to base a decision that it is meeting its obligation to provide nondiscriminatory resale, unbundled network element, and interconnection services to competitive local exchange carriers ("CLECs"). BellSouth proposes to provide a retail analogue or benchmark for each measurement. Until a statistical methodology is agreed upon, BellSouth states that it will establish a "simple" but unexplained test for "variance" within which CLEC and BellSouth results may differ without BellSouth being subject to appropriate consequences.<sup>5</sup> BellSouth states that a finding of statistical or material disparity is not an irreversible finding of discrimination.<sup>6</sup> Results are calculated on a month-at-a-time basis. BellSouth proposes individual payments to CLECs for each instance of a service failure for a given month when the materiality standard is exceeded, based upon industry-aggregated results.<sup>7</sup> The payments are based upon some portion of the recurring or non-recurring charges paid to BellSouth by the CLECs for the associated service.<sup>8</sup>

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<sup>5</sup> Though BellSouth uses the term "variance", the term is not used in its usual statistical sense. BellSouth's test for variance is simply a comparison of the means on a percentage basis.

<sup>6</sup> BellSouth does not define how this disparity would or could be challenged or reversed. Given its position that a finding of disparity is reversible, the plan cannot be considered self-enforcing. BellSouth also does not define what constitutes a "material" difference. The definition of "material" and the means to establish "materiality" can disable an otherwise workable system of consequences. In BellSouth's proposal, the issue of materiality arises only in those instances where the number of observations is extremely large for the two data sets being compared with the means and variances being only slightly offset. In such cases, (and there is no evidence that such cases are a reality in today's environment), there may be a statistically significant difference that does not create an impact in the market place.

<sup>7</sup> BellSouth's proposal provides that any test for parity will ultimately include tests for both statistical significance and materiality.

<sup>8</sup> In its proposal, BellSouth states that no state public service commission in its territory has ordered a mechanism for self-effectuating consequences. Ironically, however, BellSouth has insisted that state commissions lack the authority to impose self-effectuating remedies. See BellSouth's Comments on Penalties, Enforcement and Dispute Resolution, Louisiana Public Service Commission, Docket No. U-22252, Subdocket C, January 11, 1999.

Nevertheless, BellSouth states here that the issue of consequences for performance failures was raised in the arbitration proceedings that occurred in its region pursuant to Section 251 of the Telecommunications Act of 1996 and infers that the issue was fully explored, after which each commission decided against a self-effectuating system of consequences for poor performance results. This is absolutely not true. At the time of the first arbitrations, other issues were in the forefront for both BellSouth and new entrants. For example, gaining access to RBOC's OSS was a hotly contested issue that affected any CLEC's market entry plans at a very fundamental level. Issues regarding the measurements of BellSouth's performance necessarily have arisen later in the process. The fact that comprehensive performance measures methodologies were not offered or ordered during the first round of arbitrations is no indication that this Commission or state public service commissions are not committed to a self-executing system of consequences that will be swift and provide a sufficient incentive for RBOCs to correct discriminatory behavior. For example, the Louisiana Public Service Commission is devoting substantial time and resources to consideration of an appropriate performance measures methodology. Despite BellSouth's prior rhetoric that the states are in a better position to deal with issues such as performance measures, BellSouth chose to present this proposal at the FCC on April 9. At that time, BellSouth had not filed details of its plan or proposal for consequences with the Louisiana Public Service Commission. In fact, BellSouth had declined to submit details concerning such a proposal at the time designated for a providing those details by the Louisiana Public Service Commission.

Finally, BellSouth suggests that its proposal (or apparently any plan for self-executing consequences) cannot be invoked unless it receives authority under Section 271 of the Telecommunications Act of 1996 to provide in-region, interLATA services.<sup>9</sup> Such a condition is without precedent or basis. With respect to performance measures, Section 271 relief should be conditioned upon a fully validated comprehensive performance measurement system that produces results that reveal whether or not the performance delivered by the RBOC is discriminatory. BellSouth's suggestion that no consequences apply until Section 271 relief is granted is self-serving and without merit.

#### BellSouth's Proposal is Too Limited

BellSouth proposes a scant nine measures for determining whether it will be subject to consequences for poor performance.<sup>10</sup> These nine measures constitute only one quarter of the current thirty-five (35) measures BellSouth offers in its latest Service Quality Measurement document.<sup>11</sup> These nine measures will not capture poor performance, particularly in an unbundled network element ("UNE") environment. For example, BellSouth included no measurements for the ordering functions, i.e. Firm Order Confirmations or Rejections.

BellSouth's proposal also fails to acknowledge the significance of measuring its ability to execute on a process level and how its process failures impact end user customers. For example, BellSouth does not include in its proposal (or in its Service Quality Measurements document) any measure of coordination on customer cutovers. In addition, the roll-up of results to the highly aggregated levels BellSouth proposes will allow BellSouth to mask poor performance.

#### BellSouth Proposes Insufficient Disaggregation

BellSouth proposes to rely upon overly aggregate results.. Such aggregation masks differences and make detection of inferior performance unlikely except in the most egregious cases. For purposes of discrimination accountability, BellSouth proposes to aggregate state level results for the combined CLEC population. BellSouth's proposal combines all services provided to CLECs into only two categories.<sup>12</sup> As a first consideration, BellSouth's processes for UNE-P are untested. On the other hand resale processes (which are only effectively slightly modified retail procedures) are well understood by BellSouth. The clear potential exists for a masking of unclear performance UNE-P by "averaging" it with more extensive (and possibly superior) resale performance. The benefit for BellSouth of such masking is obvious. Despite these

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<sup>9</sup> It is important that a self-executing plan of consequences go into effect prior to an RBOC receiving in-region, interLATA authority under Section 271 of the Telecommunications Act of 1996. The effectiveness of the plan must be validated by experiencing it in operation before the RBOC enters the competitive interLATA market.

<sup>10</sup> BellSouth's proposed nine measures are: Installation Timeliness, Installation Quality, Repair Timeliness, % Repeated Report Rate, Usage Data Delivery Timeliness, Pre-ordering and ordering OSS Availability, % Due Dates Missed, Trunk Blockage, and Invoice Timeliness.

<sup>11</sup> The latest version of BellSouth's Service Quality Measurement document is dated February 12, 1999.

<sup>12</sup> In its proposal, BellSouth combines all resale and UNE combinations into one category. All other UNEs are contained in a separate category.

problems, BellSouth's proposal will aggregate data for CLECs and BellSouth at such a high level that discrimination will be virtually impossible to detect.

In addition, the proposal is not structured to tie consequences (or the lack thereof) to whether or not there is discriminatory performance. Because BellSouth bases imposition of any consequence upon industry aggregates, an individual CLEC can receive consistently poor performance and never receive a payment from BellSouth avoid any consequences because performance for the industry was "passable."

#### BellSouth's Proposal Contains an Insufficient Statistical Methodology

This Commission requires a statistical methodology for evaluating RBOCs' performance results. BellSouth's proposal acknowledges that..."any test for parity will ultimately include tests for both statistical significance and materiality."<sup>13</sup> However, BellSouth proposes that its plan take effect without having a statistical methodology in place.

BellSouth criticizes (without factual support) the statistical methodology proposed by the Local Competition User's Group ("LCUG"). Unlike the BellSouth proposal, the LCUG methodology has more power to detect discriminatory performance than alternatives currently on the table for consideration. Moreover, BellSouth's proposal reads as if there have been no agreements on a statistical methodology. While the Commission and state public service commissions in BellSouth's territory have not yet adopted a statistical model, LCUG's modified z test has been agreed to by the RBOC in California, recommended by the public service commission staff in Texas and agreed to by SWBT, and accepted by Bell Atlantic in New York. Neither BellSouth's previous SPC approach or its "jackknife" model have been agreed to or adopted by any other party or Commission.<sup>14</sup> In fact, BellSouth's "jackknife" statistical model has several flaws. Those flaws include:

--the jackknife model averages performance to such a degree that BellSouth can "cancel" out bad performance where it is experiencing competition with good performance in other areas.

--the jackknife model ignores correlation of results. A pattern of poor performance can continue with no consequences being applied.

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<sup>13</sup> BellSouth's Proposal for Self-Effectuating Enforcement Measures, April 8, 1999, page 7.

<sup>14</sup> BellSouth's initial statistical methodology was its SPC model. This model was rejected by the Florida and Georgia Public Service Commissions and the FCC. See: Order of Florida Public Service Commission, Consideration of BellSouth Telecommunications, Inc.'s Entry into InterLATA Services Pursuant to Section 271 of the Federal Telecommunications Act of 1996, Docket No. 960786-TL, Order No. PSC-97-1459-FOF-TL, November 19, 1997; Order of Georgia Public Service Commission, In Re: Performance Measurements for Telecommunications Interconnection, Unbundling and Resale, Docket No. 7892-U, May 6, 1998. BellSouth now proposes its jackknife approach. A consistent thread running between the SPC and jackknife models is that both aggregate results at too high a level, thereby masking discriminatory performance.

--the jackknife model makes the unjustified and dangerous assumption that variations are random. Systematic variations appearing, for example, at the wire center level, are not revealed under BellSouth's proposal. This flaw would make it possible for BellSouth to discriminate with target actions at a wire center level where it may be experiencing competition and to have this discrimination "cancelled" by providing "good" performance to other CLECs in other locations.

A statistical model with these flaws will cause statistically relevant performance discrepancies to go undetected. These flaws minimize the likelihood of uncovering discriminatory treatment to competitive local exchange carriers, even though the same results depicted on a sufficiently disaggregated basis could reveal systematic poor performance. Thus BellSouth has set forth a plan that inherently has the potential to mask discrimination through insufficient measures through overly aggregated results, and through inadequate statistical tests.

#### Payments Under BellSouth's Proposal Do Not Provide a Meaningful Impact

While BellSouth's flawed methodology is likely sufficient to assure it avoids consequences, BellSouth adds the further safeguard of what amounts to trivial consequences. Clearly the payment methodology and amounts proposed by BellSouth are not sufficient to ensure compliance with performance standards. The levels of payments to which BellSouth might become subject under its proposal pale in comparison to BellSouth's revenue potential from selling services to CLECs and from what it publicly projects its long distance market penetration will be after being granted in-region, interLATA authority.<sup>15</sup>

BellSouth claims that it based its proposal upon the terms and conditions contained in long-existing contracts with interexchange carriers ("IXCs") for access services. This basis for terms and conditions is inappropriate in the local market arena for several reasons. First, the business relationship for access is governed by tariff where the ILEC is specifically protected by a limitation of liability that caps at the applicable tariff charges. Thus, the access incentive systems cannot serve as a benchmark for the adequacy of consequences for failure to perform. Second, the business relationship between RBOCs and IXCs in buying and selling access services is one of supplier and customer—not competitors. BellSouth receives huge amounts of access revenues from its IXCs customers. Indeed, BellSouth has been motivated as a result of this important revenue stream to work cooperatively in developing well-honed processes for delivering access services and resolving disputes. The more the IXCs sell, the more revenue BellSouth receives.

In contrast, the RBOCs and CLECs will be direct competitors in the local market. The more the CLECs sell, the less revenue BellSouth receives. For this reason alone, the

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<sup>15</sup> BellSouth provided no estimates of payment amounts in its April 8, 1999 proposal. However, in discussing this proposal at a performance measures workshop at the Louisiana Public Service Commission last week, BellSouth's representative indicated that BellSouth would have been subject to \$25 million in payments during 1998. Such an amount is insignificant to assure protection of BellSouth's total operating revenues, which in 1998 was \$23 billion, as reported in its 1998 Annual Report.

consequences applicable to the interconnection agreements should be orders of magnitude larger than those applicable to access services. The Commission and state public service commissions must establish, as a result, self-executing consequences with more stringent terms, conditions, and consequences for failures than exist between RBOCs and IXC's in the access arena. BellSouth's proposal completely ignores the very different posture in which it sits when providing access services to IXC's versus providing local services to its local market competitors. BellSouth and other RBOCs are more intent on limiting their exposure to consequences for poor performance while simultaneously protecting their monopoly markets.

BellSouth's plan also does not match repeated or exceptionally poor performance with increasing levels of payments. There is no automatically triggering monetary consequence for repeated or exceptionally poor performance.<sup>16</sup>

### Conclusion

BellSouth's proposal will not serve as an incentive to prevent or correct "backsliding" performance. BellSouth's plan emphasizes simplicity over effectiveness, and protection of BellSouth in place of protection of the fragile competitive local service market. Most of the performance monitoring required by the Commission, the Georgia and Louisiana Public Service Commissions, and suggested by the Department of Justice would be ignored or masked by exclusions, aggregation, and averaging under BellSouth's proposal.<sup>17</sup>

A manageable plan can be developed that will encourage proper behavior on the part of the RBOCs in providing resale, unbundled network element, and interconnection services to CLECs. The Commission should stay its course in requiring an appropriate number of measures, sufficient disaggregation, a statistical methodology, and payments levels substantial enough not to be considered a mere cost of doing business. There should be an audit of an RBOC's performance measures methodology to validate its overall readiness to accurately capture performance results. The Commission must assure that the plan is, indeed, self-executing. Finally, audited performance measures methodology must be fully operable before Section 271 approval. Waiting until a RBOC enters the interLATA market before invoking a system of consequences only increases the potential for damage to the competitive process from backsliding.

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<sup>16</sup> BellSouth states that CLECs can resort to the regulatory complaint process or dispute resolution for repeated or exceptionally poor performance violations. The BellSouth position is that when significant damage is occurring, CLECs can fall back upon an approach that is time consuming, expensive and which potentially allows the harm to continue to accumulate while the issue is litigated. This is not a self-enforcing system of consequences and is in direct contradiction of the Commission's position that lengthy and costly regulatory and legal processes are insufficient methods of redress. See Louisiana II, para. 364.

<sup>17</sup> See FCC Notice of Proposed Rulemaking, In the Matter of Performance Measurements and Reporting Requirements for Operations Support Systems, Interconnection, Operator Services and Directory Assistance, CC Docket No. 998-56, April 17, 1998; Order of the Georgia Public Service Commission, In the Matter of Performance Measurements for Telecommunications Interconnection, Unbundling & Resale, Docket No. 7892-U, May 6, 1998; Order of the Louisiana Public Service Commission, In the Matter of BellSouth Telecommunications, Inc., Service Quality Performance Measurements, Docket No. U-22252-Subdocket C, August 31, 1998.



AT&T Principles	BellSouth Proposal
Consequences must have a meaningful impact and not simply be a cost of doing business for the RBOC.	When revenue potential is compared to potential payments to be made, BellSouth's proposal does not meet this test. By BellSouth's own admission, BellSouth would have paid less than 0.1% of its operating revenue as consequences during a period when its performance was clearly classified as deficient.
Consequences escalate with repeated or exceptionally poor performance.	BellSouth does not include this component in its proposal.
Additional consequences may be applicable for industry-wide poor performance.	BellSouth only applies payments to incidents of industry-wide poor performance. There is no CLEC- specific relief unless the entire industry is affected. Furthermore, because of extensive aggregation and insufficient measures, individual CLECs suffering poor performance may receive no payment while others receiving compliant support could get paid.
Minimized entanglement costs—simple but effective.	Substantial entanglement costs will apply because CLECs must turn to regulatory or legal proceedings for redress when chronic or exceedingly poor performance occurs.
Minimal opportunities to game the system.	BellSouth's current proposal includes no statistical test for parity. BellSouth's materiality proposals have no substantiation as to basis or reasonableness. If BellSouth determines what constitutes a material difference in performance, a whole host of opportunities for gaming arise. Extensive aggregation of results is another source for potential manipulation. Finally, the statistical approach proposed will not detect targeted discrimination.
Few automatic exclusions from consequences—cannot be circumvented.	There are few automatic exclusions of measurements because so few measurements are considered in BellSouth's proposal. Implementation of these few measures broadly insulates BellSouth from its parity obligations.
Applied without undue delay and additional litigation.	No self-executing consequences are addressed for performance experience of individual CLECs.